

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CHRISTOPHER BERKHEIMER,)	CASE NO. 4:11CV02270
Petitioner,)	
v.)	JUDGE BENITA Y. PEARSON
STEPHANIE MILO, <i>et al.</i> ,)	
Respondent.)	<u>MEMORANDUM OF OPINION & ORDER</u> (Resolving ECF Nos. 24 and 25)

I. INTRODUCTION

Before the Court are substituted Defendant the United States of America's ("United States") motion to alter/amend ([ECF No. 24](#)) the Court's Judgment filed on December 16, 2011 ([ECF No. 22](#) and [23](#)), and motion to dismiss Cross Claimant State Farm Insurance's ("State Farm") cross claim against the United States ([ECF No. 25](#)). For the reasons discussed below, the Court grants both motions.

On December 16, 2011, the Court issued a ruling dismissing Plaintiff Christopher Berkheimer's ("Berkheimer") claims against the United States for lack of subject matter jurisdiction and remanding the remaining claims to State court on the grounds that the Court declined to exercise supplemental jurisdiction. However, as illuminated in the instant motions, State Farm's cross claim asserted against substituted Defendant United States was properly before this Court, and therefore should not have been remanded. [ECF No. 24-1](#). Additionally, the record before the Court lacks any indication that State Farm filed an administrative claim to

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the responsible federal agency prior to asserting its counterclaim against the United States ([ECF No. 25-1](#)), which is an absolute requirement to maintain an action against the government. *See Goosby v. United States, 545 F. Supp. 2d 725, 733 (W.D. Tenn. 2008)* (providing a list of cases that were dismissed because the plaintiff failed to file an administrative claim).

In light of the foregoing, the Court grants both motions, and alters its judgment by dismissing without prejudice the State Farm cross claim against the United States.

IT IS SO ORDERED.

February 9, 2012
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge